

REMARKS

The following remarks are responsive to the September 24, 2009, Non-Final Office Action.

At the time of the Office Action, claims 1 and 3–12 were pending. The status of the claims is as follows:

- **Claims 1 and 3–12** stand rejected under **35 U.S.C. § 112, second paragraph**, as being indefinite;
- **Claims 1, 4, and 6–12** stand rejected under **35 U.S.C. § 103(a)** as being obvious over **Ouzounidis** (U.S. Patent No. 7,130,918) in view of **Kirkpatrick** (U.S. Patent No. 7,373,144);
- **Claim 3** stands rejected under **35 U.S.C. § 103(a)** as being obvious over **Ouzounidis** in view of **Kirkpatrick** and **Ganor** (U.S. Patent Publication No. 2004/0219908); and
- **Claim 5** stands rejected under **35 U.S.C. § 103(a)** as being obvious over **Ouzounidis** in view of **Kirkpatrick** and **O’Neil** (U.S. Patent No. 7,127,232).

Claim 1 has been amended to address the 35 U.S.C. § 112 issues, and claim 14 has been added for consideration by the Examiner. Applicants present arguments for distinguishing the present claims from the art cited against them below.

Applicants’ use of reference characters below is for illustrative purposes only and should not be considered as limiting unless expressly indicated as such.

35 U.S.C. § 112, Second Paragraph, Indefiniteness of Claims 1 and 3–12

1. Applicants have amended independent claim 1 to clarify timing issues raised by the Examiner.

In the Office Action, on pp. 2–3, the Examiner rejected claims 1 and 3–12 as being indefinite because the second step of “determining” requires the first step of “sending a first signal”, noting that the two steps cannot logically occur at the same time as the (previously) amended claim language implies.

In response, Applicants have amended independent claims 1 and 10 to indicate the

proper sequencing for performing the first and second steps. When a state of “non present” is determined (28), the first step is activated by setting a time delay to a value T1 (29). Then, when a state of “present” is determined, the first step is activated by setting a time delay to the value T3 (35). Then, upon expiration of the time delays before any reaction from the network, the state of “non present” is determined.

Such a characteristic is illustrated in Figure 5 and described in the appertaining discussion in the Specification.

Claim 14 has been further added to include that the second step can use a default state if no prior first signal has been sent. Support for this language can be found in paragraph [0071] of the published application.

The amendment having fully addressed the Examiner’s basis for rejection, Applicants respectfully request that the 35 U.S.C. § 112 rejection be withdrawn from the application.

35 U.S.C. § 103(a) Obviousness of Claims 1, 4 and 6–12 over Ouzounidis in View of Kirkpatrick

2. Applicants have amended independent claims 1 and 10 to include the limitation that the first step is activated during an activation of the second step by positioning said time delay that is a function of the present or not present state determined in the second step. Ouzounidis fails to teach or suggest this limitation.

In the Office Action, on pp. 3–5, the Examiner rejected claim 1 as being obvious over Ouzounidis in view of Kirkpatrick, noting how each of the claim elements was being read on by the disclosure of Ouzounidis and Kirkpatrick. In relevant part, the Examiner stated:

However, Ouzounidis does not explicitly teach positioning said time delay that is a function of the present or not present state determined in the second step. Kirkpatrick discloses a system and method for automatically providing user status in a messaging service (title). Kirkpatrick teaches positioning a time delay (T2) that is a function of the present or not present state (expiry of T1 designates a “not present” state of the wireless device) (column 5, lines 10–49).

Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the invention of Ouzounidis to include an additional delay period when waiting for the message delivered acknowledgment, as

taught by Kirkpatrick, in order to use the expiry of the first specified time limit to indicate to the originator that the recipient is out of coverage or that the communication will be made when the recipient becomes available. This modification allows enhances the user friendliness of the system in that the originator will know why a communication is unsuccessful.

Applicants have amended independent claims 1 and 10 to clarify the timing and state of the steps. As noted previously, when a state of “non present” is determined (28), the first step is activated by setting a time delay to a value T1 (29). Then, when a state of “present” is determined, the first step is activated by setting a time delay to the value T3 (35). Then, upon expiration of the time delays before any reaction from the network, the state of “non present” is determined.

Advantageously, the value of the time delay is determined as a function of the present or not present state.

In these conditions, this state of presence (which can be a “present” state or a “not present” state) is taken into account to determine the value of this time delay.

This characteristic allows controlling and limiting message traffic in the network (page 17, line 29 – page 18, line 18).

Moreover, this characteristic is relevant in the context of the aims of present invention, in which a mobile device in a present state is expected to provide an acknowledgement quickly (page 18, lines 5-10).

As it is stated in this Office Action, Ouzounidis does not disclose such a time delay that is a function of the present or not present state. However, Kirkpatrick fails to solve the deficiency in the teaching of Ouzounidis.

Kirkpatrick discloses a data communication system providing to transmitter(s) a state of accessibility of the recipient of messages.

When a message is received for a terminal which is not accessible:

- after a first time period T1, if the recipient is not accessible:
 - memorizing the message,
 - informing the transmitter regarding the state of recipient:
“temporarily offline”
- after a second time period T2, following the first time period, if the recipient is not accessible:

- informing the transmitter regarding the state of recipient: “indefinite offline”

But Kirkpatrick does not disclose sending a message to a recipient by setting a time delay as a function of the state of “present” or “non present”.

Moreover, according to Kirkpatrick, the time delay T2 is never set when the state of the recipient is “present”. In addition, this time delay T2 does not take different values.

In other words, the present claims require that a second transition is enabled by the expiration of a time delay, but that this time delay varies, depending on whether the state of the device is “present” or “not present”. In Kirkpatrick, the time delay that indicates anything equivalent to a second transition is not in any way varying based on such a device state.

Consequently, Kirkpatrick does not cure the deficiencies in the teaching of Ouzounidis and does not describe a time delay with a value that is a function of the state, as it is claimed in claim 1. None of these documents describe this characteristic. Consequently, the subject-matter of claim 1 cannot be considered as obvious over Ouzounidis in view of Kirkpatrick.

Applicants therefore respectfully request that this 35 U.S.C. § 103 rejection be withdrawn from the application.

35 U.S.C. § 103(a) Obviousness of Claims 3 and 5 over Ouzounidis, Kirkpatrick, Ganor, and O’Neil, Respectively

3. Applicants rely upon the above arguments with respect to dependent claims 3 and 5, and assert that the addition of Ganor and O’Neil does not cure the deficiency of disclosure with respect to Ouzounidis and Kirkpatrick.

In the Office Action, on pp. 8–9, the Examiner combined Ouzounidis and Kirkpatrick with Ganor and O’Neil in establishing an obviating combination of references for claims 3 and 5 respectively. Without addressing the specifics of the additional reference on the merits, Applicants rely upon the above arguments and asserts that the disclosure of Ganor and O’Neil, alone or in combination, does not serve to solve the deficiencies of the teachings of Ouzounidis and Kirkpatrick. The Examiner has cited these references for purposes related to the specifics of claims 3 and 5 respectively.

In re Appln. of Anza Hormigo et al.
Application No. 10/564,949
Response to Office Action of September 24, 2009

For these reasons, the Applicants assert that the amended claim language clearly distinguishes over the prior art, and respectfully requests that the Examiner withdraw the 35 U.S.C. § 103 rejection from the present application.

Conclusion

The application is considered in good and proper form for allowance, and the Examiner is respectfully requested to pass this application to issue. If, in the opinion of the Examiner, a telephone conference would expedite the prosecution of the subject application, the Examiner is invited to call the undersigned attorney.

Respectfully submitted,

/mark bergner/

Brian C. Rupp, Reg. No. 35,665
Mark Bergner, Reg. No. 45,877
DRINKER BIDDLE & REATH LLP
191 N. Wacker Drive, Suite 3700
Chicago, Illinois 60606-1698
(312) 569-1000 (telephone)
(312) 569-3000 (facsimile)
Customer No.: 08968

Date: December 23, 2009
CH01/25432632.1